EXHIBIT 15

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

- x

CHASOM BROWN; MARIA NGUYEN; WILLIAM
BYATT; JEREMY DAVIS; and CHRISTOPHER
CASTILLO, individually and on behalf
of all other similarly situated,

      Plaintiffs,

                No. 5:20-cv-03664-LHK

   -against-

GOOGLE LLC,

      Defendant.

- x

     Zoom video conference deposition of
RORY McCLELLAND, taken pursuant to
notice, was held remotely, commencing
February 18, 2022, 5:30 a.m. Eastern
Standard Time, before Leslie Fagin, a
Stenographic Court Reporter and Notary
Public in the State of New York.

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Page 2

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 1
 2    A P P E A R A N C E S:
      (All Parties Present Via Zoom.)
 3
 4
      BOIES SCHILLER & FLEXNER LLP
 5    Attorneys for Plaintiffs
           44 Montgomery Street, 41st Floor
 6         San Francisco, California 94104
      BY:     MARK MAO, ESQUIRE
 7             ROSANNA BAEZA, ESQUIRE
 8
      QUINN EMANUEL URQUHART & SULLIVAN
 9    Attorneys for Defendant
           51 Madison Avenue, 22nd Floor
10         New York, New York 10010
      BY:     JOMAIRE A. CRAWFORD, ESQUIRE
11             CARL SPILLY, ESQUIRE
12
      BAILEY GLASSER
13    Attorneys for Witness
           209 Capitol Street
14         Charleston, West Virginia 25301
      BY:     BENJAMIN L. BAILEY, ESQUIRE
15             ELLIOTT McGRAW, ESQUIRE
16
      ALSO PRESENT:
17
      LESLEY WEAVER, ESQUIRE
18    BLEICHMAR FONTI
        For the Calhoun Plaintiffs
19
      VANESSA WHEELER, Exhibit Tech
20      Magna Legal Services
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23
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 1              R. McClelland
 2    R O R Y   M c C L E L L A N D,  called as a
 3    witness, having been duly sworn by a
 4    Notary Public, was examined and testified
 5    as follows:
 6        MS. BAEZA:  Good morning this is
 7    Rosanna Baeza on behalf of plaintiffs
 8    and with me is Mark Mao, also from Boies
 9    Schiller Flexner.
10        MS. WEAVER:  Good morning.  Lesley
11    Weaver, Bleichmar Fonti on behalf of the
12    Calhoun plaintiffs.
13        MS. CRAWFORD:  Jomaire Crawford
14    from Quinn Emanuel Urquhart for the
15    defendant, Google LLC.  I am joined this
16    morning by my colleague, Carl Spilly.
17        MR. BAILEY:  I'm Ben Baily with
18    Bailey Glasser and my colleague, Elliott
19    McGraw is on.  We represent the witness.
20        Even if one steps out, there will
21    always be one of us here.
22    EXAMINATION BY
23    MS. BAEZA:
24        Q.  Good morning.  My name is Rosanna
25    Baeza and I represent the plaintiffs in this
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 1              R. McClelland
 2    case.
 3            Can you state your full name for
 4    the record?
 5        A.  My full name is Rory James
 6    McClelland.
 7        Q.  Before we begin, where are you
 8    located presently?
 9        A.  I'm in London, United Kingdom.
10        Q.  Where exactly in London?
11        A.  In the Boies Schiller office.  The
12    address is No. 5 New Street Square.
13        Q.  Is there anybody in the room with
14    you today?
15        A.  No, there is not.
16        Q.  Mr. McClelland, have you ever
17    testified under oath before?
18        A.  No, I haven't.
19        Q.  Do you understand that you are
20    under the same oath today as if you were in a
21    courtroom?
22        A.  I do.
23        Q.  I'm going to assume that you
24    understand the questions that I ask you,
25    unless you tell me that you don't understand
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 1              R. McClelland
 2    them, is that fair?
 3        A.  I understand, yes.
 4        Q.  Is there anything that would
 5    prevent you from testifying truthfully today?
 6        A.  No, there is nothing.
 7        Q.  If at any time you need to take a
 8    break during the deposition, will you let me
 9    know?
10        A.  I will.
11        Q.  Do you have an undergraduate
12    degree?
13        A.  I do, yes.
14        Q.  What did you study?
15        A.  Electronic and computer
16    engineering.
17        Q.  Where did you earn your
18    undergraduate degree?
19        A.  At the University of Birmingham.
20        Q.  When did you graduate from the
21    University of Birmingham?
22        A.  September 2001.
23        Q.  Do you have a graduate degree?
24        A.  I do.  I have a master's in
25    computer science from the same university.
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2 (Pages 2 to 5)

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 1           R. McClelland
 2   unreliable, would you have any basis to
 3   dispute his conclusion?
 4       A.  I'm not really sufficiently
 5   technical to have a strong view there,
 6   however, it was known that this was
 7   notoriously difficult to do and finicky and,
 8   suddenly took a lot of time before we got a
 9   model that we had confidence in.
10       Q.  Can you explain for us why that is,
11   why it was tricky or finicky?
12       A.  Well, there are different ways of
13   measuring Incognito usage.  Simple sessions,
14   number of pages, an understanding of what is
15   important, different pages have different
16   number of ad impressions on them, some pages
17   have none at all, some have three or four ads
18   and that's not represented in the simple page
19   load in Incognito metric, so where you are
20   trying to find a model that was the best
21   proxy to revenue impact was quite hard.
22   Beyond that, the technical reasons, too
23   technical for me, I'm afraid.
24       Q.  That's okay.
25           Now, I would like to ask a couple
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 1           R. McClelland
 2   of questions about joinability and the logs
 3   that you were asked about and you testified
 4   about.
 5           Do you remember counsel asking you
 6   questions regarding segmentation of regular
 7   browsing mode profiles and Incognito mode
 8   profiles?
 9       A.  Yes, I do.
10       Q.  If we can, let's introduce tab 6,
11   which is a document that was produced by
12   Google during discovery.  It bears the Bates
13   No. GOOG-CABR-00892455.  It should be up in
14   front of you as T-06.
15       A.  I'm looking at it now.
16       Q.  Appreciate that if you could take a
17   look at it and just let me know whenever you
18   are done?
19           (Exhibit 23, documents beginning
20   with Bates stamp No. GOOG-CABR-00892455,
21   marked for identification.)
22           THE EXHIBIT TECH:  Just let me know
23   when you need me to turn the page.
24           THE WITNESS:  I'm looking at the
25   actual document, so I'm fine.
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 1           R. McClelland
 2       A.  I have read the document.  Thank
 3   you.
 4       Q.  Are you familiar with this document
 5   or the general policy that this document
 6   describes?
 7       A.  Yes, I am.
 8       Q.  Can you tell us what this is?
 9       A.  It defines how data should be
10   treated by Google employees, and particularly
11   how certain types of data should be handled
12   with more care and certain things that must
13   never happen.  It's a data usage policy
14   document.
15       Q.  Did you consult this policy in
16   connection with your work for Google?
17       A.  Certainly.  This document was used
18   regularly.
19       Q.  How did you -- how was this
20   document used regularly?
21       A.  Both in terms of how we would use
22   data in our own features, but would also be
23   referenced when we were quality auditing
24   other feature teams features, perhaps
25   pointing to something in this just to draw
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 1           R. McClelland
 2   their attention to it.
 3       Q.  If you could please scroll to the
 4   page that ends in 455 and I'm looking
 5   specifically at the Go/Loss-Usage header.
 6           Do you see where that appears?
 7       A.  Page 455?
 8       Q.  That's right.  First page -- it's
 9   at the very top of the page.
10       A.  I see.  Yes, I skipped over it.
11       Q.  If we could call that up on the
12   screen.
13           Do you mind rereading this sentence
14   and letting me know when you are done?
15       A.  I have read it.
16       Q.  Based on your understanding of this
17   portion of the document, do you understand
18   that Google prohibits reidentifying any
19   individuals using anonymous or synonymous
20   data?
21       A.  I do, but that doesn't seem to
22   apply to the particular bit of tech shown,
23   but, yes, I do.
24       Q.  If we get to a portion of the
25   document where there is support for that
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1   R. McClelland
2   understanding, can you just call it out and
3   let me know?
4   A.   Sure.
5   Q.   Google prohibits, based on your
6   understanding of this policy, correlating
7   authenticated and non-authenticated
8   information, is that right?
9   A.   That is right, yes.
10   Q.   Can you explain why that is?
11   A.   An example would be in Incognito
12   mode, again, a user who signed in in regular
13   mode, one use of Incognito may be to
14   temporarily present as a non-signed-in user
15   and, therefore, it's important, from the
16   user's point of view, they have chosen to do
17   that to segment their browsing activity and,
18   therefore, it is important that Google does
19   not attempt to rejoin that data.
20   Q.   Are you aware of Google rejoining
21   that data?
22   A.   No, as far as I am aware, Google
23   never did that.
24   Q.   Why is that?
25   A.   Because it would be a breach of

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1   R. McClelland
2   user trust, potential PR incident.
3   Q.   Google also prohibits
4   fingerprinting users for the purpose of
5   associating their activity over time or
6   across contexts, is that right?
7   MS. BAEZA: Objection to form, lack
8   of foundation, compound.
9   A.   Yes, that is my understanding, that
10   fingerprinting was also not allowed to be
11   used.
12   Q.   Is your understanding of why it was
13   not allowed to be used any different than the
14   explanation you just provided for why Google
15   doesn't correlate authenticated and
16   non-authenticated data?
17   A.   Exactly, same reasons, user trust
18   perception, PR.
19   Q.   In the context of Incognito mode
20   for Chrome specifically, is it also true that
21   Google prohibits joining authenticated
22   information with non-authenticated data?
23   A.   Exactly, the policy still applies
24   for Incognito mode.
25   Q.   If a user opens an Incognito window

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1   R. McClelland
2   and does not log into a Google account, the
3   information from their Incognito browsing
4   session would be considered unauthenticated,
5   is that right?
6   A.   Not necessarily a user. There is
7   nothing to prevent a user from signing into
8   to a regular account within Incognito mode,
9   upon which they would then be authenticated,
10   but, by default, when you first launch an
11   Incognito window, you would be signed out of
12   all Google services and, therefore,
13   unauthenticated.
14   Q.   If the user in that Incognito
15   session does not log in at all to any Google
16   account, is the information from that
17   browsing session unauthenticated?
18   A.   That is right, it's
19   unauthenticated.
20   Q.   And Google team members, would you
21   agree, are tasked with preventing the joining
22   of data from non-Incognito browsing instances
23   with Incognito browsing instances?
24   A.   Tasked with preventing, my
25   understanding more that it was prohibited, it

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1   R. McClelland
2   wasn't allowed. Whether there were efforts
3   to actually make that harder, I don't know or
4   not, but my understanding of the policy was
5   that as employees, we must never do that,
6   must never endeavor to do that.
7   Q.   Are you aware of any instance where
8   you endeavored to do that or anyone who
9   reported to you?
10   A.   No.
11   MS. BAEZA: Objection to form,
12   compound, asked and answered.
13   A.   No, I am not aware of any incident
14   where that was tried.
15   Q.   Were you, in connection with your
16   work as Chrome browser privacy manager,
17   responsible for enforcing this policy?
18   A.   No, that was outside of my
19   responsibilities. There were teams who were
20   more responsible for it, but everyone had a
21   responsibility to adhere to the policy.
22   Q.   Would you say you did that in
23   connection with your employment at Google?
24   A.   Yes, that's right.
25   Q.   I would now like to introduce tab

71 (Pages 278 to 281)

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 1
 2                  - - -
 3              E X H I B I T
 4                  - - -
 5    EXHIBIT                    PAGE
 6    Exhibit 13 Documents bearing Bates    189
 7        Stamp No. GOOG-CABR-00173728
 8        through GOOG-CABR-00173735
 9    Exhibit 14 Documents bearing Bates    192
10        Stamp No. GOOG-CABR-01561563
11        through GOOG-CABR-01561579
12    Exhibit 16 Documents bearing Bates    199
13        Stamp No. GOOG-CABR-00358713
14        and GOOG-CABR-00358714
15    Exhibit 17 Document bearing Bates     208
16        Stamp No. GOOG-CABR-00799341
17    Exhibit 15 Documents bearing Bates    209
18        Stamp No. GOOG-CABR-05256755
19        through GOOG-CABR-05256760
20    Exhibit 18 Documents beginning with   231
21        Bates stamp No. GOOG-CABR-05145880
22    Exhibit 19 Documents beginning with   248
23        Bates stamp No. GOOG-CABR-0502836
24    Exhibit 20 Documents beginning with   260
25        Bates stamp No. GOOG-CABR-00503128
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 1
 2                  - - -
 3              E X H I B I T
 4                  - - -
 5    EXHIBIT                    PAGE
 6    Exhibit 21 Documents beginning with   265
 7        Bates stamp No. GOOG-BRWN-0045551
 8    Exhibit 22 Documents beginning with   268
 9        Bates stamp No. GOOG-CABR-00483672
10    Exhibit 23 Documents beginning with   275
11        Bates stamp No. GOOG-CABR-00892455
12    Exhibit 24 Documents beginning with   281
13        Bates stamp No. GOOG-CABR-05236676
14    Exhibit 25 Excerpt from 75-page       288
15        complaint
16    Exhibit 26 Documents beginning with   300
17        Bates stamp No. GOOG-BRWN-00029326
18    Exhibit 27 Excerpt from complaint     302
19    Exhibit 28 Document bearing Bates     322
20        Stamp No. GOOG-CABR-05786200
21
22
23
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25
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 1
 2                  - - -
 3        DEPOSITION SUPPORT INDEX
 4                  - - -
 5    Direction to Witness Not to Answer
      Page Line    Page Line  Page Line
 6    None
                  - - -
 7
      Request for Production of Documents
 8    Page Line    Page Line  Page Line
      None
 9
                  - - -
10
      Stipulations
11    Page Line    Page Line  Page Line
      None
12                - - -
13    Questions Marked
      Page Line    Page Line  Page Line
14    None
                  - - -
15
      To Be Filled In
16    Page Line    Page Line  Page Line
      None
17                - - -
18
19
20
21
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24
25
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 1
 2              CERTIFICATE
 3
          I HEREBY CERTIFY that the witness,
 4    RORY McCLELLAND, was duly sworn by me and
      that the deposition is a true record of the
 5    testimony given by the witness.
 6
          _____
 7        Leslie Fagin,
          Registered Professional Reporter
          Dated: February 18, 2022
 8
 9
10
          (The foregoing certification of
11    this transcript does not apply to any
      reproduction of the same by any means, unless
12    under the direct control and/or supervision
      of the certifying reporter.)
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